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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

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Request for Review by
Unicom, Inc. of Decision of
Universal Service Administrator

CC Docket Nos. 96-45 and 97-21

To: The Commission

YUKON-KUSKOKWIM HEALTH CORPORATION OPPOSITION TO
PETITION FOR REVIEW

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Date: November 19, 2001

SUMMARY

The Yukon-Kuskokwim Health Corporation (“YKHC”) is a private, non-profit rural health care provider that has sought support from the universal service program to further its mission of serving the remote Yukon-Kuskokwim Delta region in Alaska. In the Summer and Fall of 1999, YKHC followed the competitive bidding procedures set forth in Part 54 of the Commission’s rules and entered into a contract with General Communication, Inc. (“GCI”) for data connections from each of several remote clinics to YKHC’s central site in Bethel, AK. In December 2000, Unicom, Inc. — whose affiliate United Utilities, Inc. (“UUI”) communicated with YKHC about the telecommunications services sought but ultimately did not submit a bid — submitted a self-styled complaint to the Universal Service Administrative Company (“USAC”) with respect to funding commitments to YKHC made by USAC’s Rural Health Care Division (“RHCD”).

After careful consideration of the facts as set forth in the parties’ pleadings, USAC determined that Unicom’s complaint was not timely filed and that, regardless, YKHC complied with all applicable Commission rules. USAC noted that YKHC “clearly complied with the requirement that it wait 28 days . . . before making a commitment to a telecommunications carrier.” USAC also rejected Unicom’s allegation that “YKHC failed to provide Unicom with the information it needed to formulate a bid,” stating that “[t]he facts as presented do not support Unicom’s contention.” USAC also rejected Unicom’s claim that YKHC failed to follow state, local or other procurement requirements, finding that it did not have the ability or authority to examine the factual issues involved in a procurement dispute and that, regardless, YKHC had “provided additional information in support of its certification that its competitive process complied with applicable procurement law.”

In response, Unicom filed the instant Petition for Review with the Commission — that raises the same baseless claims already considered and rejected by USAC. As an initial matter, Unicom’s Petition suffers from fatal procedural defects and should be dismissed. Unicom’s Petition does not comply with the Commission’s requirement that requests for review include a statement of a party’s interest in the matter and a statement of relief sought — a deficiency directly related to Unicom’s lack of standing to seek review of USAC’s decision. Further, Unicom lost its ability to challenge USAC’s decision because its challenge of RHCD’s funding decision was untimely.

Even if the Commission overlooks these procedural defects, Unicom’s Petition fails on the merits. As USAC found, YKHC complied with all applicable competitive bidding rules and did not deprive Unicom of any information it needed to submit a bid; Unicom had access to the same information that was sufficient for GCI and AT&T Alascom to submit bids. Unicom also fails to demonstrate that the Commission is the appropriate forum to litigate claims regarding compliance with state, local or other procurement requirements — requirements with which, regardless, YKHC has demonstrated compliance.

Unicom’s Petition effectively asks the Commission to become involved in every detail of the contracting process. Unicom would have the Commission examine communications from rural health care provider employees to judge the quality of information received by vendors — a factual morass the Commission is well-advised to avoid. Similarly, Unicom would also have the Commission examine compliance with state, local, and other procurement requirements and become a nationwide “Contract Appeals Board” for the industry. The Commission should dismiss Unicom’s Petition and affirm the USAC decision.

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**YUKON-KUSKOKWIM HEALTH CORPORATION OPPOSITION TO
PETITION FOR REVIEW**

The Yukon-Kuskokwim Health Corporation ("YKHC"), by its attorneys, files this Opposition to the Petition for Review filed by Unicom, Inc. ("Unicom Petition"),¹ by which Unicom purports to seek review of a decision by the Universal Service Administrative Company ("USAC") that completely rejected all of Unicom's claims against YKHC ("USAC Letter").² The Commission should dismiss the Unicom Petition because Unicom lacks standing and its challenge was untimely filed. If the Commission reaches the merits, the Petition should be denied because it is baseless and merely reiterates the same empty claims properly considered

¹ *In re Request for Review by Unicom, Inc. of Decision of Universal Service Administrator, Petition for Review*, CC Docket Nos. 96-45 & 97-21 (Oct. 9, 2001); *see also* Supplement to Petition for Review (Oct. 12, 2001), Supplement to Petition for Review (Nov. 2, 2001). On October 19, 2001, attorneys for YKHC and GCI filed a Joint Motion for Extension of Time to request until November 19, 2001 to file this pleading. *In re Request for Review by Unicom, Inc. of Decision of Universal Service Administrator, Joint Motion for Extension of Time*, CC Docket Nos. 96-45 & 97-21 (Oct. 19, 2001).

² Letter from D. Scott Barash, Vice President & General Counsel, USAC, to William K. Keane et al. (Sep. 6, 2001).

and rejected by USAC.³ USAC concluded that Unicom's so-called "complaint" was not timely — filed or raised issues that were not ripe for review, and that in any event, on the merits YKHC complied with the applicable FCC rules regarding universal service funding for rural health care providers.⁴

I. INTRODUCTION AND BACKGROUND

YKHC is a private, non-profit corporation that delivers primary health care, educational, preventive, and health planning services to the people of the Yukon-Kuskokwim Delta Region of Alaska, a vast region that lies 400 air miles west of Anchorage. YKHC serves more than 20,000 people living in over 50 Eskimo and Indian villages located in an area encompassing approximately 75,000 square miles. The villages in YKHC's service area are extremely remote and isolated, with neither roads nor land lines connecting them to the outside world.⁵ As a result, the wide variety of telecommunications choices available to consumers in the lower 48 states are not available here, and satellite communications are the primary link to the next village and the world beyond.

Because of this remoteness, YKHC welcomed the Rural Health Care program as an opportunity to provide advanced telecommunication and telemedicine services from its central facility in Bethel, Alaska, to its remote clinics throughout the Y-K Delta. Beginning in the

³ YKHC incorporates by reference its earlier filings to USAC, which comprehensively address Unicom's allegations. See Letter from Lloyd Benton Miller and Gerard J. Waldron, Attorneys for YKHC, to Mel Blackwell, Vice President, USAC (Jan. 26, 2001) ("YKHC January Letter"); Letter from Lloyd Benton Miller and Gerard J. Waldron, Attorneys for YKHC, to Mel Blackwell, Vice President, USAC (Mar. 8, 2001) ("YKHC March Letter").

⁴ USAC Letter at 5–8.

⁵ YKHC describes all distances between clinic and other facility locations in "air miles," as this reflects the only mode of transportation that exists in its service area.

1999–2000 funding year (Funding Year 2), YKHC filed 49 FCC Form 465s (Description of Services Requested and Certification Form), which, in accordance with the Commission’s competitive bidding rules,⁶ were posted by the Rural Health Care Division of USAC (“RHCD”) on its website between July 19 and July 22, 1999.⁷ These Form 465s indicated that YKHC was seeking data connections from YKHC’s remote clinic sites to its Bethel site. In response to the posting of these Form 465s on the RHCD website, YKHC received various inquiries from AT&T Alascom (“AT&T”), General Communication, Inc. (“GCI”), and United Utilities, Inc. (“UUI”), an affiliate of Unicom. YKHC’s objective in entering the universal service program was to obtain quality telecommunications services to promote its health care mission at an affordable cost, and it left most of the technical details of delivering such services to prospective bidders.

YKHC ultimately received bids from AT&T and GCI. Unicom, however, did not submit a bid, a fact that is glossed over in Unicom’s Petition. YKHC selected GCI because it met YKHC’s telecommunications needs at a reasonable price. During this process, YKHC carefully adhered to all the procedures required by the Commission’s rules,⁸ including submitting Form 465s to be posted on the RHCD website; waiting for at least 28 days after posting to select a carrier; choosing the most cost-effective method of providing the desired service; and filing the required Form 466s. Along with the Form 466s, YKHC submitted a five-year contract with GCI,

⁶ 47 CFR § 54.603(b).

⁷ USAC Letter at 2.

⁸ See 47 CFR § 54.603(b).

signed in early December, 1999.⁹ On March 23, 2000, RHCD issued Funding Commitment Letters for seven YKHC sites; shortly thereafter, RHCD posted information regarding these funding commitments on the RHCD website.¹⁰ The RHCD issued Funding Commitment Letters only after it reviewed Form 466s and other materials filed by YKHC and determined that YKHC had complied with the Commission's competitive bidding requirements.¹¹

For the 2000–01 funding year (Funding Year 3), RHCD posted 49 FCC Form 465s, submitted by YKHC, between May 12 and June 16, 2000. YKHC submitted Form 466s for eight sites on August 31, 2001, along with the same five-year contract with GCI signed in December 1999.¹² In September and October 2001, RHCD issued Funding Commitment Letters for eight YKHC sites.¹³

II. UNICOM'S PETITION FOR REVIEW SHOULD BE DISMISSED BECAUSE IT IS PROCEDURALLY DEFECTIVE.

The Unicom Petition should be dismissed because it fails to adhere to the Commission's pleading requirements, leaving YKHC and the Commission guessing as to the precise basis for

⁹ USAC Letter at 2–3.

¹⁰ The posted information included the name of the HCP, the date of the Funding Commitment Letters, and the amount of support. USAC Letter at 3. Because service to the clinic sites was not initiated by June 30, 2000, the close of the funding year, USAC did not actually disburse any funds to YKHC for Funding Year 2.

¹¹ USAC Letter at 7 (“RHCD determined that the posted Form 465s provided sufficient information about the locations where telecommunications service was sought, and what YKHC wanted to accomplish so that prospective bidders could contact YKHC to discuss their telecommunications needs and provide bids for services.”).

¹² As discussed in note 26 *infra*, once an HCP complies with the competitive bidding process and signs a long-term contract, it does not have to go through the competitive bidding process in subsequent years (for the duration of the contract).

¹³ A list of RHCD funding commitments is available from the RHCD website at <http://www.rhc.universalservice.org/funding/>.

Unicom's claims. The Unicom Petition — as well as its December 14, 2000 letter, described as — a “complaint” — is untethered to any Commission rule and is not linked to any specific administrative action; thus it is doubtful whether this filing should be accorded any legal effect. Accordingly, the Commission should find Unicom's Petition procedurally defective and dismiss it.¹⁴

A. Unicom Does Not Have Standing to File Its Petition.

Although the Petition is silent on this point, Unicom appears to have filed its Petition for Review under Section 54.719(c) of the Commission's rules.¹⁵ That rule provides that “[a]ny Person aggrieved by an action taken by . . . the Administrator . . . may seek review from the Federal Communications Commission”¹⁶ It further requires: “A request for review pursuant to [§ 54.719(c)] shall contain: (1) a statement setting forth the party's interest in the matter presented for review . . . [and] (4) a statement of the relief sought and the relevant statutory or regulatory provision pursuant to which relief is sought.”¹⁷ Unicom's Petition for Review lacks these required jurisdictional statements, and therefore is fatally flawed.

It should come as no surprise that Unicom did not provide the required statements of its interest in the matter presented for review and the relief it sought — it has nothing to say that is jurisdictionally relevant. Indeed, this goes hand-in-hand with Unicom's lack of standing to bring

¹⁴ Unicom asks the full Commission to consider its Petition. Unicom Petition at n.1. Because the Unicom Petition does not raise “novel questions of fact, law or policy,” however, it need not be decided by the Commission and instead should be considered and acted upon by the Common Carrier Bureau. See 47 CFR § 54.722(a).

¹⁵ The Petition is captioned in a manner that suggests it is filed under Section 54.721(a) of the Commission's rules.

¹⁶ 47 CFR § 54.719(c).

¹⁷ *Id.* § 54.721(b).

a complaint in these circumstances. While the Commission (and the Bureau acting under delegated authority) reviews numerous actions taken by the Administrator, they generally stem from situations in which a Health Care Provider (“HCP”) (or a school or library under the Schools and Libraries Program) is denied funding, not from an entity that failed to even submit a bid.¹⁸ The Commission is correct to require a showing that the injury suffered by the party is both real and addressable by a favorable decision on appeal.

By contrast here, Unicom comes before the Commission as a disappointed third party vendor who never submitted a bid. The ability of a third party — a disappointed vendor or a potential vendor such as Unicom — to challenge a funding decision by USAC is doubtful, both as a legal matter and from the perspective of administrative efficiency.¹⁹ Challenges of funding decisions may only be brought by parties directly and immediately affected by the funding decision. Even if the Commission finds that YKHC did not follow proper procedures, that does

¹⁸ See, e.g., *In re Request for Review of the Decision of the Universal Service Administrator by Good Samaritan Health Systems Foundation*, Order, DA 00-1563, CC Docket No. 96-45 (rel. July 14, 2000) (denying appeal by HCP of RHCD’s denial of benefits); *In re Request for Review of the Decision of the Universal Service Administrator by Presbyterian Healthcare Services*, Order, DA 00-1131, CC Docket No. 96-45 (rel. May 23, 2000) (same); *In re Request for Review of the Decision of the Universal Service Administrator by Northern Arizona Regional Behavioral Health Authority*, Order, DA 00-528, CC Docket No. 96-45 (rel. Mar. 10, 2000) (same).

¹⁹ In two cases involving arguments that the recipient of universal service funds did not follow the Commission’s competitive bidding requirements, the Commission simply assumed it had such authority but denied the appeals, using the occasions to clarify the FCC competitive bidding procedures. See *In re Request for Review of the Decision of the Universal Service Administrator by Objective Communications, Inc. & Williams Communications Solutions*, Order, CC Docket No. 96-45, 15 FCC Rcd 8395 (1999) (denying an appeal that took issue with the fact that there was no publicly posted RFP and clarifying that there was no such requirement for RFPs under the Commission’s rules); *In re Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc. of the Decision of the Universal Service Administrator*, Order, CC Docket No. 96-45, 14 FCC Rcd. 13,734 (1999) (clarifying that parties seeking funding are accorded flexibility in choosing the most cost-effective bid and may consider other factors beyond the overall price).

not ensure Unicom will win the contract, because another vendor could be selected on remand. — Thus, Unicom has failed to show injury in fact that can be redressed by the action it seeks from the Commission.

The Commission's standing requirement is enforced by the rule requiring requests for review to include statements of interest and relief sought.²⁰ Without those jurisdictional statements, the Commission cannot satisfy itself that Unicom has standing to bring this action, and as a consequence, the only appropriate step is to dismiss the Petition. Because Unicom's frivolous challenges already have consumed substantial resources of YKHC, we urge the Commission to dismiss it with prejudice. Indeed, Unicom's filing effectively demonstrates the reason the Commission imposed limitations on the ability of persons to file requests for review — so that the Commission is not left reviewing complicated facts from years past every time a vendor does not win a contract, particularly when the HCP in question complies with all applicable Commission rules.

B. Unicom Cannot Challenge RHCD's Funding Decision Because Its Complaint to USAC Was Out of Time.

Requests for review of decisions issued by the Administrator must be filed within 30 days of the decision subject to review. 47 CFR § 54.720(a)–(c). The Commission regularly denies requests for review for not following the specified filing deadlines.²¹ As the USAC Decision concludes, Unicom's "complaint" was untimely filed with respect to Funding Year 2 ("FY 2")

²⁰ 47 CFR § 54.721(b).

²¹ See, e.g., *In re Request for Review of the Decision of the Universal Service Administrator by Newburgh Enlarged City School District*, Order, DA 01-146, CC Docket No. 96-45 (rel. Jan. 23, 2001) (denying a request for waiver of the 30-day filing deadline and stating that applicants must adhere strictly to the filing deadlines established in Section 54.720(b) in light of the thousands of applications that are received).

Funding Commitment Letters (“FCLs”) issued by RHCD.²² Having forfeited its ability to challenge these funding commitments, Unicom cannot get a second bite at the apple by challenging at the Commission level USAC’s decision merely because USAC exercised its discretion to examine the facts and found that YKHC did not violate the Commission’s rules.²³ The Commission should not tolerate this bootstrapping of stale claims.

Unicom also appears to drag new claims, raised for the first time on appeal, before the Commission. Specifically, it seeks review of several RHCD FCLs for Funding Year 3 (“FY 3”) issued between September 14 and October 26, 2001 — *after* USAC decided and rejected Unicom’s claims.²⁴ Under Section 54.719(c) of the Commission’s rules, an aggrieved party has 30 days to seek review of these FCLs. Unicom’s Petition, however, does not seek review of these FY 3 FCLs, but instead merely mentions them in an apparent attempt to prod the Commission to review these FCLs outside of the normal review process.²⁵ If Unicom wishes to

²² USAC Letter at 5; *see also* YKHC January Letter at 3–4.

²³ The requirement that requests for review be filed within 30 days is not some arcane rule that merely permits USAC and the Commission to dismiss appeals and reduce its administrative load. The Commission established the 30-day filing period in response to requests for a streamlined appeals process. *See In re Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Joint Board on Universal Service*, Third Report & Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21, Eighth Order on Reconsideration in CC Docket No. 96-45, FCC 98-306, ¶ 70 (rel. Nov 20, 1998) (“1998 Universal Service Order”). As with any filing deadline, the 30-day filing requirement was implemented in order to ensure timely resolution of disputes — allowing affected parties to proceed with their business — and to prevent precisely the type of revisiting of the distant past that Unicom is asking for in its Petition.

²⁴ Unicom Petition at n.3; Supplement to Petition for Review (Oct. 12, 2001), Supplement to Petition for Review (Nov. 2, 2001).

²⁵ Section 54.721 describes the requirements for a request for review of a decision by USAC, which include a statement setting forth the petitioner’s interest in the matter, a statement of the relevant facts, the question presented for review, and the relief sought. 47 CFR § 54.721(b). Unicom does not follow any of these requirements with respect to the FY 3 FCLs.

seek review of the FY 3 FCLs, it must file a separate request for review, either with USAC or directly with the Commission, explicitly in accordance with Section 54.719 and 54.721 of the Commission's rules. Unicom may not both seek review of the USAC Letter, which pertained to FY 2, and challenge FY 3 FCLs, which were issued *after* the date of the USAC Letter, in the same pleading.²⁶

III. BECAUSE YKHC COMPLIED WITH ALL APPLICABLE PROCUREMENT REQUIREMENTS, UNICOM'S ARGUMENTS FAIL ON THE MERITS.

Even assuming Unicom has standing to file its Petition for Review and that the Petition was timely filed, Unicom's Petition merely reiterates the same baseless allegations that USAC examined in detail and then dismissed as lacking merit.²⁷ As the USAC Letter and YKHC's prior filings show, YKHC complied with all applicable competitive bidding and procurement requirements.

²⁶ The facts leading up to the signing of a long-term contract cannot be re-challenged every year simply because RHCD issues new FCLs for each funding year. Even if the Commission interprets Unicom's Petition as requesting review of the FY 3 FCLs, Unicom may not raise the substantive issues it raises in its Petition because these relate to FY 2. Even though the FY 3 FCLs are based on the contract between YKHC and GCI, the substantive issues relating to the contract that Unicom seeks to have reviewed are not new and should have been challenged after the FY 2 FCLs were issued. Under the Commission's rules, once an HCP has complied with the competitive bidding requirements and signed a long term contract, it does not have to go through the Commission's competitive bidding process for the duration of the contract. *In re Request for Review of the Decision of the Universal Service Administrator by Thomas Crane Public Library*, Order, DA 01-315, CC Docket No. 96-45, at 2 (rel. Feb. 9, 2001); *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, 15 FCC Rcd 6732, ¶ 10 (1999). While these cases involve USAC's Schools and Libraries program — the FCC Form 470 is the SLD's equivalent of the RHCD's Form 465 — the same rationale applies to the Rural Health Care program.

²⁷ USAC Letter at 5-8.

**A. YKHC Complied With The Competitive Bidding Requirements Established —
In Section 54.603.**

USAC correctly concluded that YKHC complied with the Commission's competitive bidding requirements for rural HCPs.²⁸ Specifically, YKHC submitted FCC Form 465s to RHCD, waited for more than 28 days after the Form 465s were posted on the RHCD website, and selected the most cost-effective bidder.²⁹ These are the only requirements imposed by the Commission's competitive bidding rules, and Unicom does not dispute that YKHC complied with these requirements. Instead, Unicom argues that it was "deprived of critical information," that the information provided by YKHC's Form 465s was not sufficient, and that YKHC's contract with GCI was "at material variance from what was previously posted" on the Form 465s.³⁰ These arguments, already examined and dismissed by USAC, are without merit.

Unicom first argues that it was deprived of "critical information," such as, for instance, that "YKHC was interested in, or at least willing to accept, service to only eight communities, not forty-nine as the Form 465s had represented," and that "YKHC wanted, or was willing to accept, a five-year deal."³¹ This information is not critical, but more fundamentally, it was not kept from Unicom. The Form 465s each specify the service sought for a single site, and do not suggest that service must be provided to all sites. Similarly, as it has stated in an earlier filing, YKHC did not request a bid spanning a five-year duration; GCI provided a five-year bid on its

²⁸ *Id.* at 6–7.

²⁹ *Id.* at 7; YKHC January Letter at 2.

³⁰ Unicom Petition at 6–9.

³¹ *Id.* at 7.

own initiative.³² As USAC made clear, “there was no competitive bidding violation in regard to — GCI’s decision to respond to eight, rather than all 49, of the Form 465s that YKHC posted, nor in the contract’s five-year term.”³³

Unicom also argues that YKHC’s Form 465s did not provide it with enough information, and suggests that YKHC should have provided an RFP with “necessary additional information.”³⁴ Once again, Unicom misunderstands the Commission’s competitive bidding requirements. The Commission and USAC have made it clear that an HCP is not *required* to provide an RFP.³⁵ The instructions for HCPs available on the USAC website state as follows:

Once a service request [(Form 465)] is posted on the RHCD web site, an HCP *may choose to issue*, without the coordination of RHCD, its own request for proposal (RFP) for telecommunications services. Concurrently, a telecommunications carrier is permitted to bid on requested services *either in response to the web site posting or the RFP (if applicable)*. . . . RHCD is not involved in contract negotiations between HCPs and telecommunications carriers.³⁶

The competitive bidding requirements recognize that recipients of universal service funding vary in their knowledge or expertise and that detailed RFPs are not always necessary; instead, an HCP can provide a brief description of the services it seeks and leave the technical details up to the prospective bidders. The Commission has made it clear that while HCPs may

³² YKHC January Letter at 7.

³³ USAC Letter at 7.

³⁴ Unicom Petition at 7.

³⁵ *In re Request for Review of the Decision of the Universal Service Administrator by Objective Communications, Inc. & Williams Communications Solutions*, Order, CC Docket No. 96-45, 15 FCC Rcd 8395 (1999) (denying an appeal that took issue with the fact that there was no publicly posted RFP and clarifying that there was no such requirement for RFPs under the Commission’s rules).

³⁶ *USAC — Rural Health Care Program Process Overview*, available at <http://www.rhc.universalservice.org/overview/processoverview.asp> (emphasis added).

choose to provide more details than required by the Form 465, the Commission's rules are satisfied when an HCP provides the information required by the Form 465.³⁷ If Unicom is correct in its argument that YKHC's Form 465s did not provide it with sufficient information, its argument would appear to lie against the Commission's approval of the form itself — but even this fails because the alleged lack of “necessary additional information” did not keep GCI or AT&T from submitting bids, and has not appeared to have hampered the numerous carriers that have successfully bid for contracts since the inception of USAC's Rural Health Care and Schools and Libraries programs.

Finally, Unicom's argument that YKHC's contract with GCI was “at material variance from what was previously posted” on the Form 465s was rightfully rejected by USAC. As discussed above, the Form 465s each pertained to a single site, and nothing in the Form 465s indicated that all 49 sites had to be included in any bid. Similarly, the Form 465s did not indicate that only a one-year term would be considered. As discussed above, YKHC simply provided the information required by the FCC's forms and left the technical and other details up to prospective bidders. As USAC found, “there was no competitive bidding violation in regard to GCI's decision to respond to only eight of the 49 Forms 465, nor to propose a five-year term to the contract.”³⁸

³⁷ *Federal-State Joint Board on Universal Service, Report and Order*, FCC 97-157, CC Docket No. 96-45, ¶ 686 (rel. May 8, 1997) (“The posting of a rural health care provider's description of services [(Form 465)] will satisfy the competitive bidding requirement for the purposes of our universal service rules.”).

³⁸ USAC Letter at 7. Unicom also takes issue with USAC's finding that “YKHC ‘responded in a timely fashion to Unicom's questions with as much detail as YKHC thought necessary to open a dialogue and obtain the services sought.” Unicom Petition at 9 (quoting USAC Letter at 7) (emphasis in Unicom Petition). Unicom claims that this finding “convert[s] the requirement of a dialogue into a monologue” and that “[u]nder USAC's view, an RHCP applicant can apparently choose to ignore efforts by (continued...) ”

B. YKHC Complied With All Applicable State, Local, Or Other Requirements.

Unicom, in its Petition for Review, also repeats allegations made earlier — that YKHC failed to comply with “other procurement requirements.” YKHC has responded fully to these allegations in its filings to USAC, and refers the Commission to these filings for a detailed discussion of YKHC’s compliance with all applicable procurement requirements.³⁹

In its Petition for Review, Unicom challenges USAC’s reliance on self-certification of compliance by YKHC⁴⁰ as well as USAC’s conclusion that “it lacks the ability or authority to make an independent assessment of whether a health care provider has in fact complied with ‘any additional and applicable state, local or other procurement requirements.’”⁴¹ Once again, Unicom misinterprets the Commission’s rules and the ability and authority of USAC and the Commission to resolve disputes arising under state and local procurement rules. Section 54.603(a) of the Commission’s rules requires that HCPs “participate in a competitive bidding

prospective bidders to discuss its needs.” *Id.* Unicom infers too much from USAC’s language; implicit in USAC’s finding that YKHC responded with “as much detail as YKHC thought necessary” is a finding that YKHC’s actions were reasonable. USAC recognized that any attempt to judge the response of HCP employees under a strict objective standard would be unworkable in light of the factual controversies that are likely to arise in procurement disputes. Where the Commission has reason to believe that an HCP is in a position to mislead potential bidders — for example, when an HCP delegates the management of the bidding process to one of the bidders — it may rightfully find a violation of the competitive bidding process. *See In re Request for Review of the Decision of the Universal Service Administrator by Mastermind Internet Services*, Order, FCC 00-167, CC Docket No. 96-45, ¶ 10 (rel. May 23, 2000) But there is no suggestion that is the case here. It would be unwise and improper for USAC and/or the Commission to second-guess the quality and nature of communications between HCP employees and potential vendors for every rural HCP (and school and library) seeking universal service support.

³⁹ See YKHC January Letter at 8–12; YKHC March Letter at 1–2.

⁴⁰ Unicom alleges that YKHC made “self-serving certifications” and “made several inconsistent representations in the course of this matter,” although it does not specify what these inconsistent representations are. Unicom Petition at 10 & n.19. YKHC vehemently denies these allegations, and has responded to any such allegations in its earlier filings. *See* YKHC January Letter at 8–12; YKHC March Letter at 1–2.

⁴¹ Unicom Petition at 10 (citing USAC Letter at 8).

process pursuant to the requirements established [in Section 54.603] and any additional and applicable state, local, or other procurement requirements.” Section 54.603(a) was intended to make clear that the Commission’s rules did not preempt “any additional and applicable state, local, or other procurement requirements.”⁴² It did not seek to designate USAC and the Commission as venues for disappointed vendors to bring disputes regarding local contract and procurement laws from across the nation.

Unicom’s reading of the Commission’s ability to resolve such matters would massively expand the Commission’s authority (arguably far beyond the bounds established by Congress) and render it a “Contract Appeals Board” for the entire communications industry.⁴³ USAC was correct when it noted that if Unicom has a valid claim that YKHC violated applicable requirements, it is free to “pursue any alternative legal remedies that are available to it.”⁴⁴ Presumably, if Unicom had any real basis for any such claim, it would have sought relief in the Alaska courts, which are in a far better position than USAC or the Commission to resolve disputes arising under local procurement rules. USAC, far from “abdicat[ing] its

⁴² See *In re Federal-State Joint Board on Universal Service*, Report & Order, CC Docket No. 96-45, 12 FCC Rcd. 8776, ¶ 686 (1997), as corrected by *In re Federal-State Joint Board on Universal Service, Errata*, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *aff’d, rev’d, and remanded in part sub nom. Texas Office of Pub. Utility Counsel. v. FCC*, 183 F.3d 393 (5th Cir. 1999), *motion for stay granted in part* (Sept. 28, 1999), *petition for reh’g & reh’g en banc denied* (Sept. 28, 1999) (“Universal Service Order”).

⁴³ This outcome also would be inconsistent with the Commission’s Process Overview statement regarding the USAC program, which expressly disavows any involvement of RHCD with the contract negotiations between health care providers and telecommunications carriers. See *USAC — Rural Health Care Program Process Overview*, available at www.rhc.universalservice.org/overview/processoverview.a.sp (“Telecommunications carriers contact an HCP directly to negotiate the rates and conditions of providing the requested services. RHCD is not involved in contract negotiations between [health care providers] and telecommunications carriers.”) (emphasis added).

⁴⁴ USAC Letter at 8.

responsibilities,”⁴⁵ recognized its limited ability to resolve procurement disputes and instead noted, quite judiciously, that it would deny funding as necessary if it became “aware of a finding or decision by an appropriate authority that state, local and other applicable laws were violated in regard to [YKHC’s] funding request.”⁴⁶ This sensible approach protects the public interest and preserves the Commission’s authority while not ensnaring it in the thicket of contract appeals and procurement laws.⁴⁷

CONCLUSION

For the reasons stated above, the Unicom Petition should be dismissed with prejudice.

⁴⁵ Unicom Petition at 10.

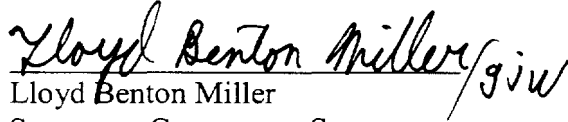
⁴⁶ USAC Letter at 8. Unicom’s contends that such a later remedy is unavailing because it would be “too late for Unicom to secure any meaningful relief.” Unicom Petition at 11. As an initial matter, the Commission should seek to vindicate rural health care interests in its universal service program, not the interests of individual carriers such as Unicom. Moreover, should Unicom seek relief from Alaska courts and emerge successful, it would merely be in the same position as any private litigant and would presumably be entitled to damages that would make it whole.

⁴⁷ This approach is also consistent with how the Commission handles allegations against licensees: it waits until any such claims are resolved in the appropriate forum and then acts upon that conclusion.

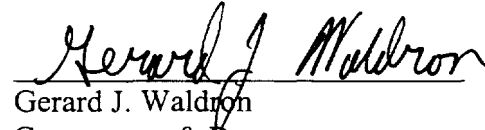
Respectfully submitted,

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CERTIFICATE OF SERVICE

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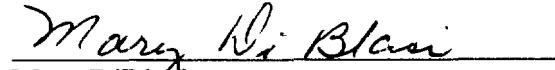
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